

March 14, 2008

## INDIVIDUAL PRACTICES OF MAGISTRATE JUDGE GABRIEL W. GORENSTEIN

Matters before Judge Gorenstein shall be conducted in accordance with the following rules unless otherwise ordered.

### 1. Communications with Chambers

**A. Letters.** Letters to the Court are permitted. However, the Court will not consider any letter that fails to comply with any applicable requirement contained in these Individual Practices. Copies of correspondence sent between counsel or the parties shall not be sent to the Court.

**B. Method of Delivering Letters.** Letters should be addressed to: 500 Pearl Street, New York, NY 10007. If delivered by hand, they should be brought to the mail room at 500 Pearl Street. Copies must be delivered to all other parties by a method as expeditious as that used to deliver the letter to the Court. Letters may not be submitted by means of the Electronic Case Filing ("ECF") system.

Letters to Chambers sent by facsimile telecopier are permitted. However, no document longer than 10 pages may be faxed without prior authorization from Chambers. Do not follow with a hard copy. The fax number is (212) 805-4268.

**C. Telephone Calls.** Except as provided in Paragraph 1.D below, telephone calls to Chambers are permitted only in emergency situations.

**D. Calendar Matters.** For information regarding the Court calendar, call Sylvia Gonzalez, the Deputy Clerk, at (212) 805-4260 between 9:00 A.M. and 5:00 P.M.

**E. Requests for Extensions of Deadlines.** All requests for extensions of deadlines must state (1) the date or dates sought to be extended, (2) the number of previous requests for extensions, (3) the reason for the extension, and (4) whether the adversary consents and, if not, the reasons given by the adversary for refusing to consent. To the extent a request to extend a particular date requires a change in other scheduled dates, the request must list the proposed change for all such other dates. A request may be made either by letter or by a joint stipulation that reflects the required information. Note: to the extent a party's adversary does not consent to a request regarding a discovery deadline, the party must also comply with the conference requirements of paragraph 2.A below.

**F. Requests for Adjournments of Court Appearances (including telephone conferences).** A request for an adjournment of a court appearance shall be made as soon as a party is aware of the need for the adjournment and, in any event, no later than five business days prior to the scheduled appearance (absent an emergency). Prior to making such a request, the party intending to so request should contact the Deputy Clerk, Sylvia Gonzalez ((212) 805-4260), to determine an alternative date for which the Court is available for a rescheduled court appearance. The requesting party should then contact all other parties to determine their availability for that date. The requesting party must then make a written request to the Court for an adjournment by letter forthwith stating the date and time that is being requested. The letter, which may be sent by fax, must be copied to all parties and include a statement as to the other

parties' positions on the change in date. The appearance is not adjourned unless counsel are thereafter informed by the Deputy Clerk that the written application has been granted.

## **2. Motions**

**A. Pre-Motion Conferences in Civil Cases.** As described below, pre-motion conferences are required where the proposed motion is returnable before Judge Gorenstein, except that no pre-motion conference is required for motions for admission pro hac vice, motions for reconsideration or reargument, motions listed in Fed. R. App. P. 4(a)(4)(A), any post-judgment motions, and applications made by order to show cause.

Discovery Motions. No application relating to discovery (that is, any dispute arising under Rules 26 through 37 or Rule 45 of the Federal Rules of Civil Procedure) shall be heard unless the moving party has first conferred in good faith by telephone or in person with all other relevant parties in an effort to resolve the dispute. If the conference with the relevant parties has not resolved the dispute, the moving party must inform the parties during the conference that the moving party intends to seek relief from the Court regarding the dispute. The moving party must thereafter promptly request a conference with the Court. See Local Civil Rule 37.2. To request a conference with the Court, the moving party shall submit a letter (normally not more than five pages) setting forth the basis of the dispute and the need for the anticipated motion. The letter must certify that the required in-person or telephonic conference took place between counsel and the relevant parties. The letter must also state the date and time of such conference, the approximate duration of the conference, the names of the attorneys who participated, and the adversary's position as to each issue being raised (as stated by the adversary during the in-person or telephonic conference). None of these requirements may be satisfied by attaching copies of correspondence between counsel. The party opposing the requested relief should submit a letter to the Court in response as soon as practicable.

Motions other than Discovery Motions. To arrange a pre-motion conference for non-discovery matters, the moving party shall submit a letter setting forth briefly (normally not more than one or two pages) the nature of the anticipated motion.

**B. Briefing Schedule on Motions.** In instances where the Court has ordered a briefing schedule on a motion, that schedule applies. In all other instances, the moving party shall, prior to filing the motion, contact all other parties in an attempt to agree on a reasonable schedule. Any agreed-upon schedule shall be disclosed to the Court in the letter that accompanies the courtesy copies of the initial motion papers. In the rare instance where the parties cannot agree on a schedule, the moving party shall so state in its initial letter and the briefing schedule will instead be in accordance with Local Civil Rule 6.1. Any extension may be sought in accordance with Paragraph 1.E above.

A return date should not be given in the Notice of Motion; but reference should be made in the Notice to the due date for opposition and reply papers (in accordance with the parties' agreement or Local Civil Rule 6.1 as applicable).

Where no Court order as to a briefing schedule is in effect, leave of the Court is not required to effectuate an agreement between the parties to extend any deadlines for filing papers. Thus, in such a situation, paragraph 1.E above is inapplicable. Any such agreement, however, must be disclosed to the Court in a letter.

When the motion is fully submitted, the party making the initial motion shall send a letter informing the Court of such with copies of the letter sent to all other parties.

**C. Courtesy Copies.** One courtesy copy of each motion paper, marked as such, must be submitted to Chambers (by mail or delivery to the mail room at 500 Pearl Street) at the same time as service on opposing counsel. Courtesy copies may not be submitted through the ECF system.

**D. Memoranda of Law.** A memorandum of law must accompany all motions and oppositions thereto. See Local Civil Rule 7.1. Memoranda of more than 10 pages shall contain a table of contents. A memorandum of law shall not incorporate by reference any accompanying declarations or affidavits. Instead, the memorandum must contain a fact section that sets forth all facts relevant to the motion and, for each factual statement, contains one or more citations to the declarations, affidavits or other evidence in the record. Factual statements contained within other sections of a memorandum also must be followed by a citation to record evidence.

**E. Filing of Motion Papers.** Motion papers shall be filed with the Clerk's Office promptly following service on the parties. Courtesy copies must be sent to Chambers in accordance with 2.C above.

**F. Confidential Materials.** The parties are reminded that the filing of any papers under seal is only permitted pursuant to an order of the Court. To the extent motion papers or other submissions to the Court contain confidential material that is to be filed under seal, each page that contains such material and only such pages shall be prominently stamped "Confidential." In addition, the margins of such pages shall be marked to specifically indicate the confidential material contained therein. A version of the filing(s) with the confidential material redacted shall be filed publicly.

**G. Oral Argument on Motions.** Judge Gorenstein normally does not hear oral argument on motions. A party may request oral argument by letter. If the Court determines that argument will be heard, it will so advise counsel.

**H. Requirements for Summary Judgment Motions.** Any motion for summary judgment must comply with Local Civil Rule 56.1. Where a party seeks summary judgment against a pro se litigant, that party is reminded to comply with the notice requirements of Local Civil Rule 56.2.

### **3. Pretrial Procedures**

**Note: The following additional procedures apply only to those cases where the parties have consented under 28 U.S.C. § 636(c) to have all proceedings, including trial, before Judge Gorenstein.**

**A. Pretrial Disclosure.** The parties are reminded of their obligations to make certain disclosures regarding expert testimony pursuant to Fed. R. Civ. P. 26(a)(2) and to make disclosure regarding evidence that may be presented at trial pursuant to Fed. R. Civ. P. 26(a)(3). Failure to comply with these requirements may result in preclusion or other sanctions.

**B. Joint Pretrial Orders in Civil Cases.** Unless otherwise ordered by the Court, within 30 days from the date for the completion of discovery in a civil case, the parties shall submit to the Court for its approval a joint pretrial order, which shall include the following:

- i. The full caption of the action.
- ii. The names, addresses (including firm names), and telephone (including cellular phone if available) and fax numbers of trial counsel.
- iii. A brief statement by plaintiff as to the basis of subject matter jurisdiction, and a brief statement by each other party as to the presence or absence of subject matter jurisdiction. Such statements shall include citations to all statutes relied on and relevant jurisdictional facts, such as citizenship and jurisdictional amount.
- iv. A brief summary by each party of the claims and defenses that party has asserted that remain to be tried, without recital of evidentiary matter but including citations to all statutes relied on.
- v. With respect to each claim remaining to be tried, a statement listing each element or category of damages sought with respect to such claim and, if appropriate, a calculation of the amount of damages sought with respect to such element or category.
- vi. A statement by each party as to whether the case is to be tried with or without a jury, and the number of trial days needed.
- vii. Any stipulations or agreed statements of fact or law that have been agreed to by all parties.
- viii. A statement by each party as to the witnesses whose testimony is to be offered in its case, indicating whether such witnesses will testify in person or by deposition. A party may not call as a witness an individual who is not listed in its portion of this statement.
- ix. A designation by each party of deposition testimony to be offered in its case, referencing page and line numbers, with any cross-designations and objections by any other party. If there is no objection or cross-designation, the Court will deem the opposing party to have waived any such objection or cross-designation. A party may not offer deposition testimony that is not listed in its portion of the designation.
- x. A list by each party of exhibits to be offered in its case. Each exhibit shall be pre-marked (plaintiff to use numbers, defendant to use letters). For any exhibit as to which there is an objection, the party objecting must briefly specify, next to the listing for that exhibit, the nature of the party's objection (e.g., "authenticity," "hearsay," "Rule 403"). Any objection not listed shall be deemed waived. A party may not offer an exhibit that is not listed in its portion of the list.

**C. Filings Prior to Trial in Civil Cases.** Unless otherwise ordered by the Court, each party shall file – at the same time as the filing of the joint pretrial order – the following:

- i. In jury cases, all parties must prepare jointly three separate documents: (1) a list of voir dire questions to be asked of prospective jurors; (2) requests to charge; and (3)

a proposed verdict sheet. To the extent a party objects to another party's requested voir dire questions, requests to charge or proposed verdict sheet, that party should (1) set forth the grounds for that objection (or refer to the trial memorandum of law for a full discussion of the objection) and (2) propose an alternative. All requests to charge, all objections and all alternative proposals must include citation to authority. If the voir dire questions, requests to charge and/or verdict sheets are prepared on a computer, electronic copies must also be submitted on disk, CD-ROM, or via e-mail. Counsel should contact Ms. Gonzalez for instructions on how to submit such materials by e-mail.

Each party must also file a Trial Memorandum of Law addressing each issue of law that the party expects to arise at or before trial.

ii. In nonjury cases, the parties are required to submit proposed findings of fact and conclusions of law. The parties must also submit trial memoranda of law that identify the issues, summarize facts and applicable law, and address any evidentiary issues. If prepared on a computer, these materials should also be submitted on disk, CD-ROM, or via e-mail. Counsel should contact Ms. Gonzalez for instructions on how to submit such materials by e-mail.

**D. Submissions to the Court Prior to Trial in Civil Cases.** At or before the time the materials set forth in paragraph 3.C above are filed, the parties shall deliver to the Court in a looseleaf notebook (with a copy to their adversary): (1) a copy of each of the party's pre-marked exhibits, see paragraph 3.B.x above, and (2) a copy of any deposition testimony designated in paragraph 3.B.ix above.

**E. Witnesses at Trial.** When a party's case commences, that party is expected to have witnesses available to fill the trial day, which runs from 9:15 a.m. to 5:00 p.m. with a one hour lunch break. The parties are warned that if a party does not have a witness available to testify, the Court may deem that party to have rested. Any requests to schedule a witness out of order and/or for a particular day must be made by a letter application that states the opposing party's position and that is sent (1) prior to trial and (2) as soon as counsel is aware of the limited availability of that witness. Untimely applications will be denied.